

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1955 of 2001
(Old No. 1481 of 1992)

1. Phool Singh
S/o Chuhada
2. Anil
S/o Phool Singh
Both R/o Khera Jat, P.S. Manglor,
District Haridwar.
..... Appellants

Versus

The State Respondent

Ms. Vijay Laxmi Phartiyal, (Amicus Curiae) for the appellants.
Mr. Rajeev Mohan Birkhani, Brief Holder for the State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 04.08.1992, passed by learned Sessions Judge, Haridwar, in Sessions Trial NO. 199 of 1990, convicting and sentencing appellant No. 1 Phool Singh, under Section 304 Part II of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.), to rigorous imprisonment for four years and under 323 /34, 324/34, 325 / 34, and 452 to rigorous imprisonment for a period of six months on each count. By said order appellant No. 2 Anil is also convicted under Section 323 , 324/34, 325 / 34, 452 of I.P.C., but instead of sentencing him, the trial court released him on the Probation of Offenders Act, 1958.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that P.W. 1 Suresh Pal (informant) is resident of Village Khera Jat, P.S. Manglor, District Haridwar. Deceased Sibba was his grandfather. On 20.02.1990, at about noon, when P.W. 1 Suresh Pal was going on a bicycle to his village, the foot of Rekha, daughter of Ved Pal (one of the accused), came under the wheel of the bicycle and on this there was some quarrel between the Ved Pal and P.W. 1 Suresh Pal. Next day on 21.02.1990, when Suresh Pal was sitting in his home, at about 3:30 P.M., accused Ved Pal, armed with 'GANDASA' (a heavy sharp edged weapon), his brothers Jogendra, armed with 'TABAL' (a sharp edged weapon), Anil (appellant No. 2) and his father Phool Singh (appellant No.1), both armed with 'LATHIES', came there. Appellant No.2 Anil gave a blow with Lathi on the person of P.W. 1 Suresh Pal. To save Suresh Pal, his grandfather Sibba came there, on which accused Ved Pal and appellant No.1 Phool Singh, gave blows with GANDASA and LATHIES, respectively, and caused injuries on the person of Sibba, resulting into his death. The incident was witnessed by P.W.2 Babu Ram, P.W. 3 Sukkad and few others. P.W. 1 Suresh pal lodged the First Information Report (Ext. A -1) with police station Manglor, on the very day, at about 6:45 P.M. P.W. 6 Head Moharrer Karan Singh prepared check report (Ext. A -2) of the First Information Report and also made entry in the general diary, a copy of which is Ext. A - 11. On the very day of incident i.e. 21.02.1990, P.W. 8 Dr. N.D. Arora recorded the injuries found on the person of

Suresh Pal. Sub Inspector K.S. Randhawa (who investigated the crime initially) took the dead body of Sibba in his possession and prepared inquest report (Ext. A –3) and other connected papers relating thereto and sent the same for postmortem examination. P.W. 5 Constable Rajendra Singh took the dead body for postmortem examination. P.W. 7 Dr. O.P. Sharma conducted the autopsy and prepared postmortem examination report (Ext. A –12). After interrogating the witnesses, the Investigating Officer P.W. 4 Ajay Kumar submitted the charge sheet against accused person, for their trial relating to offences allegedly committed by them punishable under Section 302, 452, 323 of I.P.C.

4) On receipt of the charge sheet, it appears that the Magistrate concerned, after giving necessary copies to the accused persons, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for trial. The trial court after hearing the prosecution and the defence, framed charge of offences punishable under Section 452, 323 / 34 and 302 of I.P.C., against accused Ved Pal (not an appellant in this appeal) and accused / appellant No. 1 Phool Singh. A charge of offences punishable under Section 452, 323 and 302 / 34 of I.P.C. were framed against accused / appellant No. 2 Anil and accused Jogendra (acquitted by the trial court). All the accused persons pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Suresh Pal; P.W. 2 Babu Ram, P.W. 3 Sukkad, P.W. 4 Ajay Kumar (Investigating Officer); P.W. 5 Constable Rajendra Singh; P.W. 6 Head Moharrer Karan Singh; P.W. 7 Dr. O.P.

Sharma and P.W. 8 Dr. N.D. Arora. The prosecution evidence was put to the accused persons under Section 313 of Cr.P.C., in reply to which all the accused, including both the appellants, alleged that they have been falsely implicated in the crime due to enmity. After hearing the parties, the trial court acquitted only accused Jogendra, giving him benefit of doubt. Accused Ved Pal was convicted under Section 542, 323 / 34, 324 and 325 / 34 of I.P.C. Accused / appellant No. 2 Anil was found guilty of offences punishable under Section 452, 323, 324 /34 and 325 / 34, but considering his age, he was given benefit of the Probation of Offenders Act, 1958. Accused / appellant No. 1 Phool Singh was found guilty of offences punishable under Section 452, 323 / 34, 324 /34 and under Part II of Section 304 of I.P.C., and was sentenced to rigorous imprisonment for four years under Section 304 Part II of I.P.C. and rigorous imprisonment for six months under each of the other charges found proved against him. This appeal was filed before the Allahabad High Court in the year 1998, from where it has been received by transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal. After transfer of this appeal to this Court, notices were sent to the accused appellants, but they did not turn up to contest the appeal, even after sufficient service. Therefore, this Court appointed Ms. Vijay Laxmi Phartiyal, Advocate as Amicus Curiae to assist this Court on behalf of the appellant.

5) The record was summoned from the lower court. But, part of the record is received and part of the record is reported to have been already weeded out.

6) Before further discussions, it is pertinent to mention here, the following ante mortem injuries found on the person of Sibbu (deceased), at the time of postmortem by P.W. 7 Dr. O.P. Sharma, as mentioned in the impugned judgment and order:

- (i) *Incised wound 2 cm X .5 cm, skin deep, on the left side of the head 6 cm above left eyebrow.*
- (ii) *Abraded contusion 8 cm X 6 cm on the left part of head, 7 cm above the left ear. Inside the wound there was fracture of bone.*
- (iii) *Abrasion 1 cm X 1 cm at the base of nose.*
- (iv) *Contusion with swelling in an area of 10 cm X 7 cm on the right side of the head, 4 cm above the right ear.*

According to the Medical Officer, cause of death was shock and haemorrhage on account of injury received on the head by the deceased.

7) It is also pertinent to mention here, the injuries found on the person of P.W. 1 Suresh pal, recorded by P.W. 8 Dr. N.D. Arora on 21.02.1990, at about 8:30 P.M. The same are as under:

- (i) *Abraded contusion in an area of 1.5 cm X 1 cm on the head, 10 cm above right ear. Blood was clotted.*

- (ii) Contusion on the left shoulder near an area of 2 cm X 2 cm, 4 cm away from the shoulder. Red in colour.**
- (iii) Abrasion 7 cm X 1 cm on the back of the left knee. Red in colour.**
- (iv) Contusion near injury No. 3 in an area of 3 cm X 1 cm, abrasion red in colour.**

Dr. N.D. Arora, the Medical Officer, recorded the injuries found by him in Ext. A –13, as fresh.

8) P.W. 1 Suresh Pal, informant and injured eyewitness has stated that he is grandson of deceased Sibbu. The witness has also stated that a day before the day of incident when he was going on his bicycle, foot of Rekha, daughter of accused Ved Pal, came under the wheel of his bicycle. The witness further stated that there had been a quarrel on account of said incident. P.W. 1 Suresh pal further states that on the next day, at about 3:30 P.M., accused Ved Pal, armed with 'GANDASA', accused / appellant Phool Singh and Anil, armed with LATHIES, and accused Jogendra, armed with 'TABAL', came to his house and appellant No. 2 Anil, gave Lathi blows on his person. The witness further narrates that his grandfather Sibbu came for his rescue, but he too was given Lathi blows by appellant No. 1 Phool Singh and as a result his grandfather died.

9) The statement of injured eyewitness Suresh Pal gets corroboration from the statement of other witnesses, namely P.W. 2 Babu Ram and P.W. 3 Sukkad, who also witnesses the incident. The presence of the witness at the

place of incident is natural and there evidence is trustworthy. The trial court has committed no error of law or that of fact in believing the story narrated by the prosecution witnesses. The eye account given by the witnesses gets corroboration from the medical reports quoted above. Accused persons had quarrel only with Suresh Pal, as such, the trial court was of the view that they had no intention to commit murder of Sibba, who came between them and received injuries, while saving injured Suresh Pal. Also, the trial court took note of the fact that it was only one injury of Lathi blow which resulted in death of Sibbu, as such, instead of convicting accused / appellant Phool Singh under Section 302 of I.P.C., it found him guilty of offence punishable under Part II of Section 304 of I.P.C. i.e. culpable homicide not amounting to murder. The approach of the trial court appears to be just and proper in the circumstances of the case.

10) Learned Amicus Curiae appearing on behalf of the appellants argued that the motive alleged by prosecution is not believable in the circumstances of the case. Since, it is a case of eye witness account given by the injured and other natural persons witnessing the crime, in the opinion of this Court, motive loses its importance and this Court is also of the same view as taken by the trial court that in the facts and circumstances of the case, the informant would never have implicated falsely others, leaving the person who actually committed the murder.

11) It is also argued on behalf of the appellants that the exact time of death is not clear. I see no force in the

contention for the reason that the First Information Report itself discloses that in the incident which took place on 21.02.1990, at about 3:30 P.M., Sibbu received injuries and died, soon thereafter. The First Information Report is lodged on the very day. The postmortem examination, which was conducted on the next day i.e. 22.02.1990, at about 1:30 P.M., also corroborates said date and time as is reported in Postmortem examination report that the dead body was half to one day old. As such, even if no exact time recorded in minutes and seconds regarding death of Sibbu (deceased), that doesn't create any reasonable doubt in the truthfulness of the prosecution story.

12) This Court agrees with the trial court that the First Information Report is a prompt one, as the distance between the place of incident and the nearest police station was more than ten kilometers and the informant had to go by bus from his village to the police station Manglor. It cannot be said that the buses are available every time from villages for going to the city.

13) In the opinion of this Court, the trial court has already taken a lenient view on the point of sentence as appellant No. 2 Anil is given benefit of the Probation of Offenders Act, 1958, considering his young age and accused / appellant No. 1 Phool Singh is sentenced only to rigorous imprisonment for a period of four years under Section 304 Part II of I.P.C. and six months rigorous imprisonment under other offences proved against him.

14) In view of the above discussion, this Court finds no force in the appeal. The same is liable to be dismissed. Accordingly, the appeal is dismissed. Conviction and sentence awarded by the trial court is maintained. Accused / appellant No. 1 Phool Singh is on bail. His bail is cancelled. The trial court shall take him into custody, immediately to make him serve out the sentence, awarded against him, if not already served by him. The period underwent during trial shall be adjusted against the sentence awarded.

(Prafulla C. Pant, J.)

Dt. October 26, 2006.

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